

COA No.

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In the Matter of the Personal Restraint of:

RONALD SORENSON,

Petitioner.

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PERSONAL RESTRAINT PETITION

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Kenneth H. Kato, WSBA # 6400  
Attorney for Petitioner  
1020 N. Washington St.  
Spokane, WA 99201  
(509) 220-2237

#### A. STATUS OF PETITIONER

Ronald Sorenson, DOC No. 355432, 191 Constantine Way, Aberdeen, WA 98520, applies for relief from his convictions and sentences. Mr. Sorenson was found guilty by a jury in Clark County Superior Court of count 1, first degree child molestation; count 2, first degree child molestation; count 3, second degree child molestation; count 4, second degree child molestation; count 7, second degree child molestation; count 8, second degree child molestation; count 9, third degree child molestation; count 10, first degree child molestation; and count 11, first degree child molestation. He received exceptional minimum terms of 240 months and maximum terms of life on counts 1, 2, 10, and 11. He received standard range sentences of 116 months on counts 3, 4, 7, and 8 and 60 months on count 9. Mr. Sorenson is currently incarcerated at Stafford Creek Corrections Center pursuant to those sentences.

1. The court in which he was sentenced is the Clark County Superior Court, No. 10-1-01995-2. The judgment and sentence was entered on March 8, 2012. (App. A). The judge imposing the sentence was the Honorable Richard A. Melnick. The order

correcting/modifying judgment and sentence was entered on September 16, 2014.

2. Mr. Sorenson appealed to the Washington Court of Appeals, Division II, No. 43199-8-II. The Court affirmed the convictions in an unpublished opinion filed January 28, 2014. (App. B).

3. Mr. Sorenson's petition for review to the Washington Supreme Court, No. 89974-6, was denied on July 9, 2014.

4. The mandate was filed August 12, 2014. The order correcting/modifying judgment and sentence was entered on September 16, 2014.

5. This is the first personal restraint petition filed by Mr. Sorenson.

#### B. GROUNDS FOR RELIEF

Mr. Sorenson has the following reason for this Court to grant him relief from the convictions.

##### First Ground

Mr. Sorenson received ineffective assistance of counsel, who, by his own admission, was unprepared for trial, failed to investigate and interview witnesses, and failed to secure an expert witness on an implanted memory defense.

### C. STATEMENT OF FINANCES

Mr. Sorenson is unable to pay the filing fee or fees of counsel and asks this Court to waive the filing fee. He is presently incarcerated, has no assets, and has liabilities consisting of legal financial obligations. Present counsel has been retained by Mr. Sorenson's family.

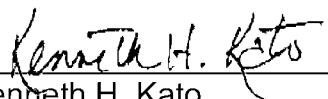
### D. REQUEST FOR RELIEF

Mr. Sorenson respectfully asks this Court to grant his personal restraint petition, reverse the convictions, and remand for new trial.

### E. DECLARATION OF ATTORNEY

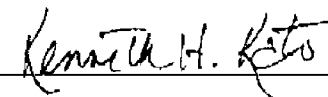
I declare under penalty of perjury under the laws of the State of Washington that I am the attorney for petitioner; I have read the petition; I know its contents; and I believe the petition is true.

DATED this 15<sup>th</sup> day of September, 2015, at Spokane, WA.

  
\_\_\_\_\_  
Kenneth H. Kato

### CERTIFICATE OF SERVICE

I certify that on September 15, 2015, I served a copy of the personal restraint petition on Ronald Sorenson, # 355432, 191 Constantine Way, Aberdeen, WA 98520.

  
\_\_\_\_\_

## EXHIBIT A

C. James Sowder

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FILED

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**Superior Court of Washington  
County of Clark**

Scott G. Weber, Clerk, Clark Co.

**State of Washington**, Plaintiff,

vs.

RONALD LEE SORENSON,  
Defendant.

SID: \_\_\_\_\_  
If no SID, use DOB: 6/28/1971

No. 10-1-01995-2 ✓

**Felony Judgment and Sentence --  
Prison**

☒ **RCW 9.94A.507 Prison Confinement  
(Sex Offense and Kidnapping of a Minor)**

**(FJS)**

☒ **Clerk's Action Required, para 2,1, 4.1, 4.3a,  
4.3b, 5.2, 5.3, 5.5 and 5.7**

☐ **Defendant Used Motor Vehicle**

☐ **Juvenile Decline** ☐ **Mandatory** ☐ **Discretionary**

**I. Hearing**

1.1 The court conducted a sentencing hearing this date; the defendant, the defendant's lawyer, and the (deputy) prosecuting attorney were present.

**II. Findings**

There being no reason why judgment should not be pronounced, in accordance with the proceedings in this case, the court  ***Finds:***

2.1 **Current Offenses:** The defendant is guilty of the following offenses, based upon  
☐ guilty plea ☒ jury-verdict 1/25/12 ☐ bench trial :

Count	Crime	RCW (w/subsection)	Class	Date of Crime
01	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	3/9/2002 to 3/8/2004
02	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	12/9/2002 to 3/8/2008
03	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	3/9/2004 to 3/9/2006
04	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	3/9/2004 to 3/8/2006

*Felony Judgment and Sentence (FJS) (Prison)  
(Sex Offense and Kidnapping of a Minor Offense)  
(RCW 9.94A.500, .505)(WPF CR 84.0400 (7/2009))  
Page 1 of 14*

07	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	8/23/2004 to 8/22/2007
08	CHILD MOLESTATION IN THE SECOND DEGREE	9A.44.086	FB	8/23/2004 to 8/22/2007
09	CHILD MOLESTATION IN THE THIRD DEGREE	9A.44.089	FC	8/23/2007 to 8/22/2009
10	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	12/12/2003 to 12/11/2005
11	CHILD MOLESTATION IN THE FIRST DEGREE	9A.44.083	FA	12/12/2003 to 12/11/2005

Class: FA (Felony-A), FB (Felony-B), FC (Felony-C)

(If the crime is a drug offense, include the type of drug in the second column.)

☐ Additional current offenses are attached in Appendix 2.1a.

☒ The defendant is a sex offender subject to indeterminate sentencing under **RCW 9.94A.507**.

The jury returned a special verdict or the court made a special finding with regard to the following:

- ☐ The defendant engaged, agreed, offered, attempted, solicited another, or conspired to engage a victim of child rape or child molestation in sexual conduct in return for a fee in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.839.
- ☐ The offense was predatory as to Count \_\_\_\_\_. RCW 9.94A.836.
- ☐ The victim was under 15 years of age at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.837.
- ☐ The victim was developmentally disabled, mentally disordered, or a frail elder or vulnerable adult at the time of the offense in Count \_\_\_\_\_. RCW 9.94A.838, 9A.44.010.
- ☐ The defendant acted with **sexual motivation** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.835.
- ☐ This case involves **kidnapping** in the first degree, kidnapping in the second degree, or unlawful imprisonment as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent. RCW 9A.44.130.
- ☐ The defendant used a **firearm** in the commission of the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.
- ☐ The defendant used a **deadly weapon other than a firearm** in committing the offense in Count \_\_\_\_\_. RCW 9.94A.825, 9.94A.533.
- ☐ Count \_\_\_\_\_, **Violation of the Uniform Controlled Substances Act (VUCSA)**, RCW 69.50.401 and RCW 69.50.435, took place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, public transit vehicle, or public transit stop shelter; or in, or within 1000 feet of the perimeter of a civic center designated as a drug-free zone by a local government authority, or in a public housing project designated by a local governing authority as a drug-free zone.
- ☐ The defendant committed a crime involving the manufacture of methamphetamine, including its salts, isomers, and salts of isomers, **when a juvenile was present in or upon the premises of manufacture** in Count \_\_\_\_\_. RCW 9.94A.605, RCW 69.50.401, RCW 69.50.440.
- ☐ Count \_\_\_\_\_ is a **criminal street gang**-related felony offense in which the defendant compensated, threatened, or solicited a minor in order to involve that **minor** in the commission of the offense. RCW 9.94A.833.
- ☐ Count \_\_\_\_\_ is the crime of **unlawful possession of a firearm** and the defendant was a **criminal street gang** member or associate when the defendant committed the crime. RCW 9.94A.702, 9.94A. \_\_\_\_.

- ☐ The defendant committed ☐ **vehicular homicide** ☐ **vehicular assault** proximately caused by driving a vehicle while under the influence of intoxicating liquor or drug or by operating a vehicle in a reckless manner. The offense is, therefore, deemed a violent offense. RCW 9.94A.030.
- ☐ Count \_\_\_\_\_ involves **attempting to elude** a police vehicle and during the commission of the crime the defendant endangered one or more persons other than the defendant or the pursuing law enforcement officer. RCW 9.94A.834.
- ☐ Count \_\_\_\_\_ is a felony in the commission of which the defendant used a **motor vehicle**. RCW 46.20.285.
- ☐ The defendant has a **chemical dependency** that has contributed to the offense(s). RCW 9.94A.607.
- ☐ The crime(s) charged in Count \_\_\_\_\_ involve(s) **domestic violence**. RCW 10.99.020.
- ☐ Counts \_\_\_\_\_ encompass the same criminal conduct and count as one crime in determining the offender score (RCW 9.94A.589).
- ☐ **Other current convictions listed under different cause numbers used in calculating the offender score are** (list offense and cause number):

	<i>Crime</i>	<i>Cause Number</i>	<i>Court (county &amp; state)</i>
1.			

- ☐ Additional current convictions listed under different cause numbers used in calculating the offender score are attached in Appendix 2.1b.

## 2.2 Criminal History (RCW 9.94A.525):

	<i>Crime</i>	<i>Date of Crime</i>	<i>Date of Sentence</i>	<i>Sentencing Court (County &amp; State)</i>	<i>A or J Adult, Juv.</i>	<i>DV?*</i>	<i>Type</i>
1	See attached criminal history						

\*DV: Domestic Violence was pled and proved

- ☒ Additional criminal history is attached in Appendix 2.2.
- ☐ The defendant committed a current offense while on community placement/community custody (adds one point to score). RCW 9.94A.525.
- ☐ The prior convictions for \_\_\_\_\_ are one offense for purposes of determining the offender score (RCW 9.94A.525).
- ☐ The prior convictions for \_\_\_\_\_ are not counted as points but as enhancements pursuant to RCW 46.61.520.



### 2.3 Sentencing Data:

Count No.	Offender Score	Seriousness Level	Standard Range (not including enhancements)	Plus Enhancements*	Total Standard Range (including enhancements)	Maximum Term	Maximum Fine
01	24	X	149 MONTHS to 198 MONTHS	None	149 MONTHS to 198 MONTHS	LIFE	\$50,000.00
02	24	X	149 MONTHS to 198 MONTHS	None	149 MONTHS to 198 MONTHS	LIFE	\$50,000.00
03	24	VII	87 MONTHS to 116 MONTHS	None	87 MONTHS to 116 MONTHS	10 YEARS	\$20,000.00
04	24	VII	87 MONTHS to 116 MONTHS	None	87 MONTHS to 116 MONTHS	10 YEARS	\$20,000.00
07	24	VII	87 MONTHS to 116 MONTHS	None	87 MONTHS to 116 MONTHS	10 YEARS	\$20,000.00
08	24	VII	87 MONTHS to 116 MONTHS	None	87 MONTHS to 116 MONTHS	10 YEARS	\$20,000.00
09	24	V	60 months	None	60 months	5 YEARS	\$10,000.00
10	24	X	149 MONTHS to 198 MONTHS	None	149 MONTHS to 198 MONTHS	LIFE	\$50,000.00
11	24	X	149 MONTHS to 198 MONTHS	None	149 MONTHS to 198 MONTHS	LIFE	\$50,000.00

\* (F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW 9.94A.533(9), (CSG) criminal street gang involving minor, (AE) endangerment while attempting to elude.

☐ Additional current offense sentencing data is attached in Appendix 2.3.

For violent offenses, most serious offenses, or armed offenders, recommended sentencing agreements or plea agreements are ☐ attached ☐ as follows: \_\_\_\_\_

### 2.4 ☒ Exceptional Sentence. The court finds substantial and compelling reasons that justify an exceptional sentence:

☐ below the standard range for Count(s) \_\_\_\_\_

☒ above the standard range for Count(s) \_\_\_\_\_

☐ The defendant and state stipulate that justice is best served by imposition of the exceptional sentence above the standard range and the court finds the exceptional sentence furthers and is consistent with the interests of justice and the purposes of the sentencing reform act.

☒ Aggravating factors were ☐ stipulated by the defendant, ☐ found by the court after the defendant waived jury trial, ☒ found by jury, by special interrogatory. *Q SOME LAWS NOT COUNT BECA*

☐ within the standard range for Count(s) \_\_\_\_\_ but served consecutively to Count(s) EXCEED.

Findings of fact and conclusions of law are attached in Appendix 2.4. ☐ Jury's special interrogatory is *no* attached. The Prosecuting Attorney ☐ did ☐ did not recommend a similar sentence. *PO*

### 2.5 Ability to Pay Legal Financial Obligations. The court has considered the total amount owing, the defendant's past, present, and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds:

☒ That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.753.

☐ The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753): \_\_\_\_\_

☐ The defendant has the present means to pay costs of incarceration. RCW 9.94A.760.

### III. Judgment

3.1 The defendant is **guilty** of the Counts and Charges listed in Paragraph 2.1 and Appendix 2.1.

3.2 ☐ The court **dismisses** Counts \_\_\_\_\_ in the charging document.

### IV. Sentence and Order

**It is ordered:**

**4.1 Confinement.** The court sentences the defendant to total confinement as follows:

(a) **Confinement.** RCW 9.94A.589. A term of total confinement in the custody of the Department of Corrections (DOC):

<u>240</u> months on Count 01	<u>240</u> months on Count 02
<u>116</u> months on Count 03	<u>116</u> months on Count 04
<u>116</u> months on Count 07	<u>116</u> months on Count 08
<u>60</u> months on Count 09	<u>240</u> months on Count 10
<u>240</u> months on Count 11	

☐ The confinement time on Count(s) \_\_\_\_\_ contain(s) a mandatory minimum term of \_\_\_\_\_.

☐ The confinement time on Count \_\_\_\_\_ includes \_\_\_\_\_ months as enhancement for ☐ firearm ☐ deadly weapon ☐ sexual motivation ☐ VUCSA in a protected zone ☐ manufacture of methamphetamine with juvenile present ☐ sexual conduct with a child for a fee.

Actual number of months of total confinement ordered is: 240 months

All counts shall be served concurrently, except for the portion of those counts for which there is an enhancement as set forth above at Section 2.3, and except for the following counts which shall be served consecutively: \_\_\_\_\_

The sentence herein shall run consecutively with any other sentence previously imposed in any other case, including other cases in District Court or Superior Court, unless otherwise specified herein: \_\_\_\_\_

Confinement shall commence immediately unless otherwise set forth here: \_\_\_\_\_

The total time of incarceration and community supervision shall not exceed the statutory maximum for the crime.

(b) **Confinement.** RCW 9.94A.507 (Sex Offenses only): The court orders the following term of confinement in the custody of the DOC:

Count 01	minimum term	<u>240 months</u>	maximum term	<u>Statutory Maximum/ Life</u>
Count 02	minimum term	<u>240 months</u>	maximum term	<u>Statutory Maximum/ Life</u>
Count 03	minimum term	_____	maximum term	<u>Statutory Maximum</u>
Count 04	minimum term	_____	maximum term	<u>Statutory Maximum</u>
Count 07	minimum term	_____	maximum term	<u>Statutory Maximum</u>
Count 08	minimum term	_____	maximum term	<u>Statutory Maximum</u>
Count 09	minimum term	_____	maximum term	<u>Statutory Maximum</u>
Count 10	minimum term	<u>240 months</u>	maximum term	<u>Statutory Maximum/ Life</u>

Count 11 minimum term 240 months maximum term Statutory Maximum/Life

- (c) **Credit for Time Served:** The defendant shall receive 43 days credit for time served prior to sentencing for confinement that was solely under this cause number. RCW 9.94A.505. The jail shall compute earned early release credits (good time) pursuant to its policies and procedures.
- (d) ☐ **Work Ethic Program.** RCW 9.94A.690, RCW 72.09.410. The court finds that the defendant is eligible and is likely to qualify for work ethic program. The court recommends that the defendant serve the sentence at a work ethic program. Upon completion of work ethic program, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions in Section 4.2. Violation of the conditions of community custody may result in a return to total confinement for remaining time of confinement.

**4.2 Community Custody.** (To determine which offenses are eligible for or required for community placement or community custody see RCW 9.94A.701)

(A) The defendant shall be on community placement or community custody for the longer of:

- (1) the period of early release. RCW 9.94A.728(1)(2); or  
(2) the period imposed by the court, as follows:

Count(s) 3, 4, 7, 8, 9 36 months Sex Offenses  
Count(s) \_\_\_\_\_ 36 months for Serious Violent Offenses  
Count(s) \_\_\_\_\_ 18 months for Violent Offenses  
Count(s) \_\_\_\_\_ 12 months (for crimes against a person, drug offenses, or offenses involving the unlawful possession of a firearm by a street gang member or associate)

(Sex offenses, only) For count(s) 01, 02, 10, 11, sentenced under RCW 9.94A.507, for any period of time the defendant is released from total confinement before the expiration of the statutory maximum.

The total time of incarceration and community supervision/custody shall not exceed the statutory maximum for the crime.

(B) While on community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while on community custody; (6) not own, use, or possess firearms or ammunition; (7) pay supervision fees as determined by DOC; (8) perform affirmative acts as required by DOC to confirm compliance with the orders of the court; (9) for sex offenses, submit to electronic monitoring if imposed by DOC; and (10) abide by any additional conditions imposed by DOC under RCW 9.94A.704 and .706. The defendant's residence location and living arrangements are subject to the prior approval of DOC while on community custody. For sex offenders sentenced under RCW 9.94A.709, the court may extend community custody up to the statutory maximum term of the sentence.

The court orders that during the period of supervision the defendant shall:

- ☐ consume no alcohol.  
☒ have no contact with: Alexus Brinkley, Britney Sorenson, Brooke Sorenson  
☐ remain ☐ within ☐ outside of a specified geographical boundary, to wit: \_\_\_\_\_  
☒ not reside within 880 feet of the facilities or grounds of a public or private school (community protection zone). RCW 9.94A.030(8).  
☐ participate in the following crime-related treatment or counseling services: \_\_\_\_\_

- ☒ undergo an evaluation for treatment for ☐ domestic violence ☒ substance abuse ☐ mental health  
☐ anger management, and fully comply with all recommended treatment. \_\_\_\_\_  
☐ comply with the following crime-related prohibitions: \_\_\_\_\_

☒ Additional conditions are imposed, if attached or are as follows:

ATTACHED APPENDIX A

ATTACHED APPENDIX F

(C) For sentences imposed under RCW 9.94A.507, the Indeterminate Sentence Review Board may impose other conditions (including electronic monitoring if DOC so recommends). In an emergency, DOC may impose other conditions for a period not to exceed seven working days.

Court Ordered Treatment: If any court orders mental health or chemical dependency treatment, the defendant must notify DOC and the defendant must release treatment information to DOC for the duration of incarceration and supervision. RCW 9.94A.562.

**4.3a Legal Financial Obligations:** The defendant shall pay to the clerk of this court:

JASS CODE

RTN/RJN	\$ <u>To be set</u>	Restitution to: _____ (Name and Address--address may be withheld and provided confidentially to Clerk of the Court's office.)	
PCV	\$ 500.00	Victim assessment	RCW 7.68.035
PDV	\$ _____	Domestic Violence assessment	RCW 10.99.080
CRC	\$ <u>1402.87</u>	Court costs, including RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190	
		Criminal filing fee \$ <u>200.00</u> FRC	
		Witness costs \$ <u>1032.87</u> WFR	
		Sheriff service fees \$ _____ SFR/SFS/SFW/WRF	
		Jury demand fee \$ <u>250.00</u> JFR	
		Extradition costs \$ _____ EXT	
		Other \$ _____	
PUB	\$ <u>2,250.00</u>	Fees for court appointed attorney	RCW 9.94A.760
	\$ _____	Trial per diem, if applicable.	
WFR	\$ <u>698.00</u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
	\$ _____	DUI fines, fees and assessments	
FCM/MTH	\$ <u>500.00</u>	Fine RCW 9A.20.021; <input type="checkbox"/> VUCSA chapter 69.50 RCW, <input type="checkbox"/> VUCSA additional fine deferred due to indigency RCW 69.50.430	
CDF/LDI/FCDF NTF/SAD/SDI	\$ _____	Drug enforcement Fund # <input type="checkbox"/> 1015 <input type="checkbox"/> 1017 (TF)	RCW 9.94A.760
	\$ <u>100.00</u>	DNA collection fee	RCW 43.43.7541
CLF	\$ _____	Crime lab fee <input type="checkbox"/> suspended due to indigency	RCW 43.43.690

FPV \$\_\_\_\_\_ Specialized forest products RCW 76.48.140  
RTN/RJN \$\_\_\_\_\_ Emergency response costs (Vehicular Assault, Vehicular Homicide, Felony DUI  
only, \$1000 maximum) RCW 38.52.430  
Agency: \_\_\_\_\_  
\$\_\_\_\_\_ Other fines or costs for: \_\_\_\_\_  
\$\_\_\_\_\_ **Total** RCW 9.94A.760

☒ The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:

☒ shall be set by the prosecutor.

☐ is scheduled for \_\_\_\_\_ (date).

☐ The defendant waives any right to be present at any restitution hearing (sign initials): \_\_\_\_\_.

☐ **Restitution** Schedule attached.

☐ Restitution ordered above shall be paid jointly and severally with:

RJN	<b>Name of other defendant</b>	<b>Cause Number</b>	<b>Victim's name</b>	<b>Amount</b>

The Department of Corrections (DOC) or clerk of the court shall immediately issue a Notice of Payroll Deduction. RCW 9.94A.7602, RCW 9.94A.760(8).

All payments shall be made in accordance with the policies of the clerk of the court and on a schedule established by DOC or the clerk of the court, commencing immediately, unless the court specifically sets forth the rate here: Not less than \$ 100.00 per month commencing upon release. RCW 9.94A.760.

The defendant shall report to the clerk of the court or as directed by the clerk of the court to provide financial and other information as requested. RCW 9.94A.760(7)(b).

☐ The court orders the defendant to pay costs of incarceration at the rate of \$\_\_\_\_\_ per day, (actual costs not to exceed \$100 per day). (JLR) RCW 9.94A.760.

The financial obligations imposed in this judgment shall bear interest from the date of the judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160.

**4.3b** ☐ **Electronic Monitoring Reimbursement.** The defendant is ordered to reimburse \_\_\_\_\_ (name of electronic monitoring agency) at \_\_\_\_\_, for the cost of pretrial electronic monitoring in the amount of \$\_\_\_\_\_.

**4.4 DNA Testing.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754.

☒ **HIV Testing.** The defendant shall submit to HIV testing. RCW 70.24.340.

**4.5 No Contact:**

☒ The defendant shall not have contact with ALEXUS K BRINKLEY, BRITNEY E SORENSON, BROOKE L SORENSON including, but not limited to, personal,

verbal, telephonic, written or contact through a third party for life years (which does not exceed the maximum statutory sentence).

☒ The defendant is excluded or prohibited from coming within:

☐ 500 feet ☐ 880 feet ☒ 1000 feet of:

☒ ALEXUS K BRINKLEY. BRITNEY E SORENSON, BROOKE L SORENSON  
(name of protected person(s))'s

☒ home/ residence ☒ work place ☒ school

☒ (other location(s)) person

☐ other location \_\_\_\_\_  
for life years (which does not exceed the maximum statutory sentence).

☐ A separate Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed concurrent with this Judgment and Sentence.

**4.6 Other:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4.7 Off-Limits Order.** (Known drug trafficker). RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the county jail or Department of Corrections: \_\_\_\_\_

**4.8** For Offenders on Community Custody, when there is reasonable cause to believe that the defendant has violated a condition or requirement of this sentence, the defendant shall allow, and the Department of Corrections is authorized to conduct, searches of the defendant's person, residence, automobile or other personal property. Residence searches shall include access, for the purpose of visual inspection, all areas of the residence in which the defendant lives or has exclusive/joint control/access and automobiles owned or possessed by the defendant.

**4.9** If the defendant is removed/deported by the U.S. Immigration and Customs Enforcement, the Community Custody time is tolled during the time that the defendant is not reporting for supervision in the United States. The defendant shall not enter the United States without the knowledge and permission of the U.S. Immigration and Customs Enforcement. If the defendant re-enters the United States, he/she shall immediately report to the Department of Corrections if on community custody or the Clerk's Collections Unit, if not on Community Custody for supervision.

## V. Notices and Signatures

**5.1 Collateral Attack on Judgment.** If you wish to petition or move for collateral attack on this Judgment and Sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, you must do so within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090.

**5.2 Length of Supervision.** If you committed your offense prior to July 1, 2000, you shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to 10 years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional 10 years. If you committed your offense on or after July 1, 2000, the court shall retain jurisdiction over you, for the purpose of your compliance with payment of the legal financial obligations, until you have completely satisfied your obligation, regardless

of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5). The clerk of the court has authority to collect unpaid legal financial obligations at any time while you remain under the jurisdiction of the court for purposes of your legal financial obligations. RCW 9.94A.760(4) and RCW 9.94A.753(4).

**5.3 Notice of Income-Withholding Action.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections (DOC) or the clerk of the court may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606.

**5.4 Community Custody Violation.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.633.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.714.

**5.5 Firearms.** You may not own, use or possess any firearm unless your right to do so is restored by a superior court in Washington State, and by a federal court if required. You must immediately surrender any concealed pistol license. (The clerk of the court shall forward a copy of the defendant's driver's license, identicard, or comparable identification to the Department of Licensing along with the date of conviction or commitment.) RCW 9.41.040 and RCW 9.41.047.

**5.6 Sex and Kidnapping Offender Registration.** Laws of 2010, ch. 367 § 1, 10.01.200.

**1. General Applicability and Requirements:** Because this crime involves unlawful imprisonment involving a minor as defined in Laws of 2010, ch. 367 § 1, you are required to register.

If you are a resident of Washington you must register with the sheriff of the county of the state of Washington where you reside. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of the state of Washington where you will be residing.

If you are not a resident of Washington but you are a student in Washington, or you are employed in Washington, or you carry on vocation in Washington, you must register with the sheriff of the county of your school, place of employment, or vocation. You must register within three business days of being sentenced unless you are in custody, in which case you must register at the time of your release with the person designated by the agency that has jurisdiction over you. You must also register within three business days of your release with the sheriff of the county of your school, where you are employed, or where you carry on a vocation.

**2. Offenders Who are New Residents or Returning Washington Residents:** If you move to Washington or if you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state.

**3. Change of Residence Within State:** If you change your residence within a county, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of residence to the sheriff within three business days of moving. If you change your residence to a new county within this state, you must register with the sheriff of the new county within three business days of moving. Also within three business days, you must provide, by certified mail, with return receipt requested or in person, signed written notice of your change of address to the sheriff of the county where you registered.

**4. Leaving the State or Moving to Another State:** If you move to another state, or if you work,

carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within three business days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. If you move out of the state, you must also send written notice within three business days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.

**5. Notification Requirement When Enrolling in or Employed by a Public or Private Institution of Higher Education or Common School (K-12):** If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within three business days prior to arriving at the institution. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within three business days prior to beginning to work at the institution. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within three business days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within three business days prior to arriving at the school to attend classes. The sheriff shall promptly notify the principal of the school.

**6. Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within three business days of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within three business days after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register with the sheriff of the new county not more than three business days after entering the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You must keep an accurate accounting of where you stay during the week and provide it to the county sheriff upon request. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.

**7. Application for a Name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within three business days of the entry of the order. RCW 9A.44.130(7).

**8. Length of Registration:**

☒ Class A felony – Life; ☐ Class B Felony – 15 years; ☐ Class C felony – 10 years

**5.7 Motor Vehicle:** If the court found that you used a motor vehicle in the commission of the offense, then the Department of Licensing will revoke your driver's license. The clerk of the court is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke your driver's license. RCW 46.20.285.

**5.8 Other:** \_\_\_\_\_

**5.9 Persistent Offense Notice**

The crime(s) in count(s) 1, 2, 3, 4, 7, 8, 10, 11 is/are "most serious offense(s)." Upon a third conviction of a "most serious offense", the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody. RCW 9.94A.030, 9.94A.570



The crime(s) in count(s) 1, 2, 10, 11 is/are one of the listed offenses in RCW 9.94A.030.(31)(b). Upon a second conviction of one of these listed offenses, the court will be required to sentence the defendant as a persistent offender to life imprisonment without the possibility of early release of any kind, such as parole or community custody.

**Done** in Open Court and in the presence of the defendant this date: March 8, 2012

Richard A. Melnick  
Judge/Print Name Richard A. Melnick

Anna M. Klein  
Deputy Prosecuting Attorney  
WSBA No. 36726  
Print Name: Anna M. Klein

James J. Sowder  
Attorney for Defendant  
WSBA No. 09072  
Print Name: James J. Sowder

Ronald Lee Sorenson  
Defendant  
Print Name:  
RONALD LEE SORENSON

**Voting Rights Statement:** I acknowledge that I have lost my right to vote because of this felony conviction. If I am registered to vote, my voter registration will be cancelled.

My right to vote is provisionally restored as long as I am not under the authority of DOC (not serving a sentence of confinement in the custody of DOC and not subject to community custody as defined in RCW 9.94A.030). I must re-register before voting. The provisional right to vote may be revoked if I fail to comply with all the terms of my legal financial obligations or an agreement for the payment of legal financial obligations.

My right to vote may be permanently restored by one of the following for each felony conviction: a) a certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) a court order issued by the sentencing court restoring the right, RCW 9.92.066; c) a final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) a certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 29A.84.660. Registering to vote before the right is restored is a class C felony, RCW 29A.84.140.

Defendant's signature: Ronald Lee Sorenson

I am a certified or registered interpreter, or the court has found me otherwise qualified to interpret, in the \_\_\_\_\_ language, which the defendant understands. I interpreted this Judgment and Sentence for the defendant into that language.

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Vancouver, Washington on (date): \_\_\_\_\_

\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
Print Name

I, Scott G. Weber, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action now on record in this office.

**Witness** my hand and seal of the said Superior Court affixed this date: \_\_\_\_\_

Clerk of the Court of said county and state, by: \_\_\_\_\_, Deputy Clerk

## Identification of the Defendant

RONALD LEE SORENSON

10-1-01995-2

SID No: \_\_\_\_\_  
(If no SID take fingerprint card for State Patrol)

Date of Birth: 6/28/1971

FBI No.

Local ID No. 128570

PCN No. \_\_\_\_\_

Other \_\_\_\_\_

Alias name, DOB:

Race: W

Ethnicity:

Sex: M

**Fingerprints:** I attest that I saw the same defendant who appeared in court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court, Deputy Clerk, \_\_\_\_\_

Dated: 3-8-2012

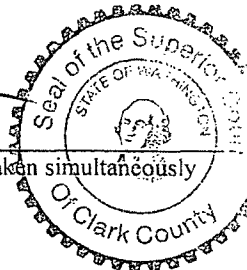
The defendant's signature: \_\_\_\_\_

Left four fingers taken simultaneously

Left  
Thumb

Right  
Thumb

Right four fingers taken simultaneously



## EXHIBIT B

FILED  
COURT OF APPEALS  
DIVISION II

2014 JAN 28 AM 9:53

STATE OF WASHINGTON

BY  DEPUTY

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

RONALD LEE SORENSON,

Appellant.

No. 43199-8-II

UNPUBLISHED OPINION

JOHANSON, A.C.J. — Ronald Lee Sorenson appeals his jury convictions and sentences for multiple sex crimes. Sorenson claims that (1) the trial court manifestly abused its discretion by denying a continuance, (2) the State offered insufficient evidence for his first degree child molestation convictions, (3) the trial court erred by failing to provide a limiting instruction, (4) the prosecutor's misconduct denied him a fair trial, and (5) scrivener's errors plague his judgment and sentence. Because the trial court did not abuse its discretion by denying the continuance, the State offered sufficient evidence to support the convictions, the trial court provided a limiting instruction, and Sorenson did not demonstrate that prosecutorial misconduct resulted in reversible error, we affirm. But we accept the State's concession and remand to correct the scrivener's errors in Sorenson's judgment and sentence.

## FACTS

The State charged Sorenson with two counts of first degree child molestation<sup>1</sup> and two counts of second degree child molestation<sup>2</sup> against BES, two counts of second degree child molestation and one count of third degree child molestation<sup>3</sup> against BLS, and two counts of first degree child molestation against AKB.<sup>4</sup> BES, BLS, and AKB are all related to Sorenson.

Before trial, Sorenson moved for a continuance so that he could obtain impeachment evidence. He sought information about a subsequently added victim, evidence from Facebook, and he wanted to interview 72 additional potential witnesses. The State contested the continuance motion, arguing that (1) the case was over a year old; (2) Sorenson's new attorney had been working the case for six months; (3) the State added its latest victim a month and a half earlier; and (4) Sorenson's desired evidence was irrelevant and cumulative, so his need for it did not outweigh the detriment of delay to the victims. The trial court denied Sorenson's continuance motion after considering the State's arguments and judicial economy interests.

At trial, BES testified that when she was 11, she woke up roughly 10 times with Sorenson's hand touching her sexual or intimate parts. AKB testified that when she was 8 or 9, Sorenson would lie with her on the couch "spooning style" 15 to 20 times, touching her sexual or intimate parts. 3B Report of Proceedings (RP) at 371. BLS testified that when she was between

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<sup>1</sup> RCW 9A.44.083.

<sup>2</sup> RCW 9A.44.086.

<sup>3</sup> RCW 9A.44.089.

<sup>4</sup> We use initials to protect the minor victims' privacy. The State also charged Sorenson with sex crimes against two other victims. The jury acquitted Sorenson of those charges and they are not relevant to this appeal.

11 and 14 years old, she woke up two times with her hand touching Sorenson's sexual or intimate parts; on one of those occasions, Sorenson's hand was also touching BLS's sexual or intimate parts. Additionally, BLS testified that when she was 14, she woke up with Sorenson's hand touching her sexual or intimate parts.

Sorenson testified in his own defense, explaining that the girls frequently climbed into bed or onto the couch with him when he was sleeping. While Sorenson admitted that he "cuddled" with the girls, he denied ever inappropriately touching them. 4A RP at 496. He also acknowledged that had he touched any of the girls, the touching was purely accidental during the course of cuddling.

After the presentation of evidence, Sorenson requested an instruction to limit consideration of evidence regarding each victim to the charges relating to that victim. Sorenson proposed his own limiting instruction, but the trial court refused to read it to the jury because it inaccurately stated the law. The trial court did, however, direct the jury in its final instructions, "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." 4A RP at 568.

During closing argument, the prosecutor made the following statements to convince the jury of the victims' credibility beyond a reasonable doubt. (1) "[I]f you have an abiding belief that these girls testified truthfully, you have an abiding belief in what they said, you are satisfied beyond a reasonable doubt." 4B RP at 577-78. (2) "I want to go through each girl and submit -- and show you how they are credible and how you should have an abiding belief in what they are saying." 4B RP at 578. (3) "And they have come forward now and taken an oath to tell all of you the truth about what happened." 4B RP at 593.

[(4)] And you should have an abiding belief that they told you the truth. You should have an abiding belief that he is guilty. And if you do have an abiding belief in the truth of what those girls said, then it is your sworn duty, your sworn obligation, and your sworn responsibility to find him guilty.

4B RP at 594. (5) “[I]f you have an abiding belief that equals a reasonable -- beyond a reasonable doubt.” 4B RP at 649. Defense counsel objected only to this last statement. The jury found Sorenson guilty of these crimes against BES, BLS, and AKB, and Sorenson appeals.<sup>5</sup>

## ANALYSIS

### I. DENIED CONTINUANCE

Sorenson argues that the trial court manifestly abused its discretion by denying defense counsel’s continuance motion. The trial court, however, properly weighed the relevant factors and it did not manifestly abuse its discretion when it denied the continuance motion.

We review the trial court’s grant or denial of a continuance for manifest abuse of discretion. *State v. Campbell*, 103 Wn.2d 1, 14, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094 (1985). A trial court manifestly abuses its discretion when it exercises its discretion on clearly untenable grounds or is manifestly unreasonable. *State v. Yuen*, 23 Wn. App. 377, 380, 597 P.2d 401 (quoting *Friedlander v. Friedlander*, 80 Wn.2d 293, 298, 494 P.2d 208 (1972)), *review denied*, 92 Wn.2d 1030 (1979). In granting or denying a continuance, a trial court may weigh factors such as the defendant’s right to a fair trial, diligence of counsel in investigating issues, whether the trial court granted previous continuances, and the availability of evidence or witnesses. *See State v. Watson*, 69 Wn.2d 645, 650-51, 419 P.2d 789 (1966).

Before denying the continuance motion, the trial court considered that (1) the case was over a year old; (2) Sorenson’s new attorney had been working the case for six months; and (3)

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<sup>5</sup> The jury also found that Sorenson used his position of trust to facilitate those crimes.

the evidence Sorenson wanted to obtain was irrelevant, cumulative, and did not outweigh the detriment of delay to the victims. The trial court also articulated that it intended to deny the continuance in the interest of judicial economy. Sorenson cannot show that his desired impeachment evidence, which had been available throughout the case, was crucial to his defense or that his attorney was diligent in securing it. Thus, he cannot demonstrate that the trial court denied the continuance based on clearly untenable grounds or reasons; accordingly, he does not show that the trial court manifestly abused its discretion.

## II. SUFFICIENT EVIDENCE

Sorenson next argues that the State failed to prove his first degree child molestation charges beyond a reasonable doubt because it could not show he acted for sexual gratification. We disagree because the record demonstrates that the State sufficiently proved the crimes.

We review claims of insufficient evidence to determine whether, “after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We draw all reasonable inferences from the evidence in favor of the State and against the defendant. *Salinas*, 119 Wn.2d at 201. A sufficiency challenge admits the truth of the State’s evidence and all reasonable inferences from it. *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254, *aff’d*, 95 Wn.2d 385, 622 P.2d 1240 (1980). We leave credibility determinations to the fact finder and do not review them on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

To prove first degree child molestation, the State needed to prove beyond a reasonable doubt that Sorenson had sexual contact with a victim who is less than 12 years old, that the victim and Sorenson are not married, and that Sorenson is at least 36 months older than the victim. See RCW 9A.44.083(1). “Sexual contact” means any touching of the sexual or other



intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. RCW 9A.44.010(2). Sorenson specifically argues there is insufficient evidence that he had contact with BES and AKB for purposes of sexual gratification. The record does not support his claim.

Sorenson analogizes to *State v. Powell*, 62 Wn. App. 914, 816 P.2d 86 (1991), *review denied*, 118 Wn.2d 1013 (1992), to argue that he only touched the girls inadvertently, and that any touching “was susceptible to innocent explanation.” Statement of Additional Grounds at 18. In *Powell*, the sexual contact was “fleeting” and “susceptible of innocent explanation,” so the court held that no rational trier of fact could have found sexual contact beyond a reasonable doubt and reversed Powell’s conviction. 62 Wn. App. at 918.

Here, unlike *Powell*, Sorenson touched BES and AKB neither fleetingly nor inadvertently. BES testified that Sorenson touched her roughly 10 times; she woke up numerous times with Sorenson’s hand touching her sexual or intimate parts. AKB testified that Sorenson would lie with her on the couch “spooning style” 15 to 20 times, touching her sexual or intimate parts. 3B RP at 371. Taken in the light most favorable to the State, any rational trier of fact could have concluded from this evidence that Sorenson touched the girls’ sexual or intimate parts for sexual gratification; thus, the State sufficiently proved the sexual contact element of Sorenson’s first degree child molestation convictions and his claim fails.

### III. LIMITING INSTRUCTION

Sorenson next argues that the trial court violated his right to a fair trial by failing to give a limiting instruction. We disagree.

Generally, when a trial court admits evidence for a limited purpose and the party against whom it was admitted requests a limiting instruction, trial courts must give an instruction. ER

105; *State v. Aaron*, 57 Wn. App. 277, 281, 787 P.2d 949 (1990). Although trial courts may refuse to give limiting instructions that erroneously state the law, once a defendant requests even an erroneous limiting instruction in the ER 404(b) context, the trial court has a duty to provide a correct limiting instruction. *State v. Gresham*, 173 Wn.2d 405, 424-25, 269 P.3d 207 (2012). The trial court has broad discretion to fashion its own limitation on the use of evidence. *State v. Hartzell*, 156 Wn. App. 918, 937, 237 P.3d 928 (2010).

Here, the trial court properly refused to give Sorenson's erroneous limiting instruction, which included inaccurate language: "When deciding *the guilt or innocence of a victim* on each count, evidence in other alleged counts can only be used for the limited purpose of showing common scheme or plan." 4A RP at 538 (emphasis added). The trial court, however, properly directed the jury in its final instructions: "A separate crime is charged in each count. You must decide each count separately. Your verdict on one count should not control your verdict on any other count." 4A RP at 568. Sorenson failed to challenge this instruction's validity at trial or on appeal; thus, he does not demonstrate that the trial court improperly instructed the jury.

#### IV. PROSECUTORIAL MISCONDUCT

Sorenson next argues that the prosecutor committed misconduct by shifting the burden of proof to Sorenson, prejudicing his trial. We disagree because even if we assume, without deciding, that the prosecutor erred, Sorenson fails to show enduring and lasting prejudice incurable by a remedial instruction.

An appellant claiming prosecutorial misconduct must show both improper conduct and resulting prejudice. *State v. Emery*, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). A defendant suffers prejudice only where there is a substantial likelihood the misconduct affected the jury's verdict. *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997), *cert. denied*, 523 U.S. 1007

(1998). We review a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. *Brown*, 132 Wn.2d at 561. When defense counsel fails to object to alleged prosecutorial misconduct at trial, she or he does not preserve the issue for appeal unless the misconduct is so flagrant and ill intentioned that it evinces an enduring and resulting prejudice incurable by a remedial instruction. *Emery*, 174 Wn.2d at 760-61.

Although Sorenson failed to object at trial to four of the five challenged statements, he argues that for the four unchallenged statements, the prosecutor committed flagrant misconduct by equating “reasonable doubt” with “abiding belief.” Br. of Appellant at 9. Specifically, Sorenson argues that the prosecutor committed misconduct by arguing that if the jury has an abiding belief that the victims testified truthfully, then the jury is satisfied beyond a reasonable doubt that Sorenson is guilty. Sorenson cites *State v. Anderson*, 153 Wn. App. 417, 220 P.3d 1273 (2009), *review denied*, 170 Wn.2d 1002 (2010), to support his argument that the prosecutor here improperly told the jury its job was to determine the “truth” and solve the case. Sorenson’s argument lacks merit.

First, we must analyze the four statements that Sorenson challenges for the first time on appeal. For us to consider these statements for the first time on appeal, Sorenson must demonstrate that these statements constituted flagrant and ill-intentioned misconduct incurable by a remedial instruction. *See Emery*, 174 Wn.2d at 760-61. Here, the prosecutor’s four statements informed the jury that if it had an abiding belief that the victims testified truthfully, then it was satisfied beyond a reasonable doubt that Sorenson was guilty.

Even assuming without deciding that these statements constituted misconduct, Sorenson does not demonstrate that these statements were flagrant or ill intentioned or that any

misstatement of the law could not have been cured by a remedial instruction that clarified the reasonable doubt standard. *See Emery*, 174 Wn.2d at 758-59 (explaining that a misstatement of the “esoteric” reasonable doubt standard that shifts the burden of proof may be “certainly and seriously wrong” but does not demonstrate bad faith or an attempt to inject bias). Accordingly, he failed to show flagrant and ill-intentioned conduct incurable by a remedial instruction; so he did not preserve these challenges for appeal. *See Emery*, 174 Wn.2d at 760-61.

Next, regarding Sorenson’s preserved prosecutorial misconduct claim, we review the prosecutor’s argument for improper conduct and resulting prejudice. *Emery*, 174 Wn.2d at 756. Sorenson argues that the prosecutor’s statement, “[I]f you have an abiding belief that equals a reasonable -- beyond a reasonable doubt,” misstated the basis on which the jury could acquit. 4B RP at 649. Even assuming, without deciding, that Sorenson may show that this statement constitutes misconduct, he cannot demonstrate resulting prejudice—he cannot show that the statement likely affected the jury’s verdict.

Here, Sorenson denied that any inappropriate touching ever happened, and he contended that even had it happened, the touching occurred accidentally in the course of cuddling with the victims. But the jury heard testimony from BES, BLS, and AKB, who each testified that on multiple occasions, they each woke up to Sorenson touching their sexual or intimate parts. And the trial court instructed the jury that it must decide each count against each victim separately, such that the verdict on one count should not control other verdicts. Sorenson does not demonstrate that absent the prosecutor’s allegedly improper argument, the jury would not have believed the victims’ testimony beyond a reasonable doubt. Thus, Sorenson does not show prejudice and his prosecutorial misconduct claim fails.

V. SCRIVENER'S ERRORS

Sorenson argues, and the State concedes, that his judgment and sentence contains scrivener's errors. We accept the State's concession and remand to correct those errors.

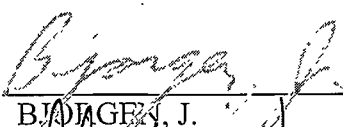
A defendant may challenge an erroneous sentence for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). The remedy for a scrivener's error in a judgment and sentence is remand to the trial court for correction. *See State v. Naillieux*, 158 Wn. App. 630, 646, 241 P.3d 1280 (2010); CrR 7.8(a).

Sorenson's judgment and sentence incorrectly states the dates that Sorenson committed the offenses in counts 2, 3, and 9. Sorenson committed count 2 between March 9, 2002 and March 8, 2004; count 3 between March 9, 2003 and March 8, 2006; and count 9 between August 23, 2006 and August 22, 2009. We accept the State's concession and remand to the trial court for it to correct Sorenson's judgment and sentence on counts 2, 3, and 9 to accurately reflect when Sorenson committed those crimes.

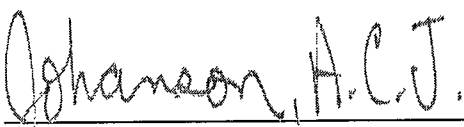
We affirm, but remand to correct scrivener's errors in Sorenson's judgment and sentence.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

We concur:

  
B. J. ORTEGA, J.

  
MAXA, J.

  
JOHANSON, A.C.J.

## KATO LAW OFFICE

**September 15, 2015 - 10:54 AM**

### Transmittal Letter

Document Uploaded: 0-prp-Personal Restraint Petition-20150915.pdf

Case Name: in re prp of sorensen

Court of Appeals Case Number:

**Is this a Personal Restraint Petition?** ☒ Yes ☐ No

### The document being Filed is:

Designation of Clerk's Papers

Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: \_\_\_\_\_

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

☒ Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

### Comments:

No Comments were entered.

Sender Name: Kenneth H Kato - Email: [khkato@comcast.net](mailto:khkato@comcast.net)

COA No.

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In the Matter of the Personal Restraint of:

RONALD SORENSON,

Petitioner.

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BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION

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## TABLE OF CONTENTS

I. QUESTION PRESENTED BY CLAIM.....	1
A. Did Ronald Sorenson receive ineffective assistance of counsel, who, by his own admission, was unprepared for trial, failed to investigate and interview witnesses, and failed to secure an expert witness on a suggestive or implanted memory defense?.....	1
II. STATEMENT OF THE CASE.....	1
III. ARGUMENT.....	7
A. Standards for determining a personal restraint petition.....	7
B. Mr. Sorenson received ineffective assistance of counsel, who, by his own admission, was unprepared for trial, failed to investigate and interview witnesses, and failed to secure an expert witness on a suggestive or implanted memory defense.....	8
IV. CONCLUSION.....	12

## TABLE OF AUTHORITIES

### Table of Cases

<i>Gersten v. Senkowski</i> , 426 F.3d 588 (2 <sup>nd</sup> Cir. 2005).....	11
<i>In re Pers. Restraint of Coats</i> , 173 Wn.2d 123, 267 P.3d 324 (2011).....	7
<i>In re Pers. Restraint of Yates</i> , 177 Wn.2d 1, 296 P.3d 872 (2013).....	8
<i>In re Vandervlugt</i> , 120 Wn.2d 427, 842 P.2d 950 (1992).....	8



<i>State v. A.N.J.</i> , 168 Wn.2d 91, 225 P.3d 956 (2010).....	11, 12
<i>State v. Contreras-Rebollar</i> , 177 Wn.2d 563, 303 P.3d 1002 (2013).....	7
<i>State v. Fedoruk</i> , 184 Wn. App. 866, 339 P.3d 233 (2014).....	12
<i>State v. Hendrickson</i> , 129 Wn.2d 61, 917 P.2d 563 (1996).....	9
<i>State v. Jeffries</i> , 105 Wn.2d 398, 717 P.2d 722, <i>cert.</i> <i>denied</i> , 479 U.S. 922 (1986).....	9, 12
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	9
<i>State v. Ray</i> , 116 Wn.2d 531, 806 P.2d 1220 (1991).....	10
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984).....	9
Constitutional Provision	
U.S. Const., amend. VI.....	9, 10

## I. QUESTION PRESENTED BY CLAIM

1. Did Ronald Sorenson receive ineffective assistance of counsel, who, by his own admission, was unprepared for trial, failed to investigate and interview witnesses, and failed to secure an expert witness on a suggestive or implanted memory defense?

## II. STATEMENT OF THE CASE

In July 2010, Mr. Sorenson and his wife, Sabrina, decided to separate and planned to divorce. Sabrina was to tell their three daughters, BLS, BES, and BJS, and their niece, AH, who was like a daughter. (RP 2 at 130, 132, 133, 161-69). She planned to take the blame for the separation, telling the girls her failure to address her molestation as a child made it impossible to continue the marriage to their father. (RP 2 at 133-34).

Despite their parents' growing apart, the household appeared happy. (RP 2 at 192; RP 3A at 252). On any given night, any one of their natural children would fall asleep in their parents' bed while watching a movie and would spend the night there. (RP 2 at 139, 210; P 3 at 254). The girls would also on occasion cuddle with their father on the couch while watching TV. (RP 3A at 287). A niece, AB, whom Sabrina had baby-sat for years, was a frequent

visitor at the house and would also cuddle on the couch. (RP 3 at 370-71).

Mr. Sorenson, a union truck driver, supported his family driving long hours. (RP 4A at 427). Working swing shift and graveyard to make the best money, he was often not home at night so he was not the parent frequently sharing a bed with the daughters. (RP 4A at 477-83, 491-92).

Some four months before her parents separated, BJS told Sabrina she woke up one night in her parents' bed with her hand in her father's pants. (RP 2 at 134, 196-98). She indicated this incident happened years earlier and only one time. (RP 2 at 192-201). When Sabrina asked him about what BJS said, Mr. Sorenson denied any inappropriate touching. Sabrina wanted to believe him. (RP 2 at 134-35).

Mr. Sorenson wanted to be with Sabrina when she told the girls about the separation. (RP 4A at 501). She went ahead and told the girls without him, explaining the separation, her history of being molested, and how Mr. Sorenson may have molested BJS. AH and BES then volunteered they also felt he had touched them inappropriately. (RP 2 at 133-41). After talking with the girls,

Sabrina called Mr. Sorenson and told him not to return home. (RP 2 at 155).

The police got involved and a detective interviewed the girls. Thereafter, the State filed first, second, and third degree child molestation charges against Mr. Sorenson. (RP 2 at 178-85; CP 1-16, 24-33).

The case proceeded to jury trial. BJS was born on December 9, 1996. (RP 2 at 190). One time, when she was 6-8 years old, she was asleep in her parents' bed when she awoke to find her hand under her dad's underwear and on top of his penis. BJS did not tell anyone about this incident until the eighth grade when her mother told her about being molested as a child. BJS called the touching molestation only after that conversation. (RP 2 at 192-201). The jury acquitted Mr. Sorenson of first degree child molestation of BJS. (CP 31, 86).

BES was born on March 9, 1990. (RP 2 at 131). She said the first time anything happened with her father was on a trip to the beach. (RP 3A at 234). She was sleeping with her parents when she woke up to Mr. Sorenson's hands in her pants and moving on her vagina. (RP 3A at 234). BES continued to sleep in her parents' bed. (RP 3A at 234-37).

She said that more touching occurred over 10 times through the years. BES would wake up to find her hand on Mr. Sorenson's penis or his hand up her shirt or on her vagina. (RP 3A at 237). After the first incident, the other incidents took place at the various homes where the family lived in Vancouver. (RP 3A at 238). She testified most of the touching was when she was 11 or 12 and in the eighth grade. (RP 3A at 240). One incident took place when she was in her parents' bed and felt his fingertips inside her vagina. BES moved to her own bed and woke up to find him in bed with her and his hand on her breast. She then went to the couch. Mr. Sorenson slipped in behind her, whereupon she got off the couch and locked herself in the bathroom. (RP 3A at 240).

She recalled one time when she felt her father's penis "in between the butt cheeks a little bit." (RP 3A at 241). Her mother was often asleep in the bed. (RP 3A at 243). BES said the touching stopped when she was a 14-year-old freshman and got a boyfriend. (RP 3A at 246).

BES did not tell her sisters about the touching as she believed she was the only one involved and did not want to spoil her sisters' love for their father. (RP 3A at 249). When she was a

freshman or sophomore, BES told her best friend, Desirae, about it. (RP 3A at 250; RP 3B at 365-67).

AH was born on March 21, 1988. (RP 3A at 282). Their niece moved in with the Sorensons when she was 13. (*Id.*). About 6-8 months later, she was spooning on the couch with Mr. Sorenson. It was normal for him to be affectionate toward her. (RP 3A at 287). She said he put his hands down her pants and moved his hand back and forth on her vagina, but was unsure if it was over or underneath her underwear. (RP 3A at 290). When Mr. Sorenson asked her if it was OK, she did not respond and pretended to be asleep. (RP 3A at 287, 293). AH got up as soon as she could and went outside. (RP 3A at 288).

AH did her best not to be alone with him after that. (RP 3A at 297-300). She did not tell Sabrina or the other girls until the night Sabrina told them about the separation. AH was afraid to tell anyone because she had no other place to go. (RP 3A at 293-94).

AB's birthday is December 12, 1993. (RP 3B at 368). She was also a niece and Sabrina baby-sat her in the fourth grade when she was in fourth grade and 8-9 years old. (RP 3B at 370). She said Mr. Sorenson would spoon with her on the couch while watching TV and would touch her breasts and crotch. This

happened 15-20 times. AB acted like nothing happened. (RAP 3B at 371-73). Although she testified she told her mother what happened, AB's mother did not testify and did not corroborate what AB said. (RAP 3B at 373).

BLS was born on August 23, 1993. (RAP 3B at 399). When she was 11 to 15 years old, there were several times when she awoke to find her hand in Mr. Sorenson's pants or his hand in her pants while sleeping in her parents' bed. Sabrina was also in the bed at least some of the time. (RP 3B at 405-13). BLS described her mother as a heavy sleeper. (RP 3B at 410). She did not tell anyone about the touching and never wanted to talk about it. The first time she heard about her sisters' allegations was when Sabrina gathered them together to tell them she and Mr. Sorenson were separating. (RP 3B at 414).

The jury found Mr. Sorenson guilty on all counts, except count 5 involving BJS and count 6 involving AH. The jury also found by special verdict on each guilty count that Mr. Sorenson abused a position of trust and multiple convictions created a high offender score with the result that some current offenses went unpunished. (CP 84-105).

Mr. Sorenson did not object to the court entering judgment on each count. (CP 122-43). The court imposed an exceptional minimum term of 240 months and a maximum term of life on counts 1, 2, 10, and 11. (CP 126). It imposed a standard range sentence on all other counts. (*Id.*).

The Court of Appeals affirmed his convictions, but remanded to the trial court to correct errors in the judgment and sentence. (Ex. B to PRP). The Supreme Court denied his petition for review on July 9, 2014. Although the mandate was entered on August 12, 2014, the trial court subsequently entered an order modifying/correcting judgment and sentence on September 16, 2014. Mr. Sorenson waived his right to be present at resentencing. This personal restraint petition is timely as the judgment and sentence was not final until that date, which was after the mandate was issued. *In re Pers. Restraint of Skylstad*, 160 Wn.2d 944, 954, 162 P.3d 413 (2007); *State v. Contreras-Rebollar*, 177 Wn.2d 563, 565, 303 P.3d 1002 (2013).

### III. ARGUMENT

#### A. Standards for determining a personal restraint petition

Relief through a collateral attack on a judgment and sentence is extraordinary. *In re Pers. Restraint of Coats*, 173



Wn.2d 123, 132, 267 P.3d 324 (2011). This timely personal restraint petition can generally challenge the conviction on any grounds, but must meet a high standard. *Id.* A petitioner must show by a preponderance of the evidence that he was actually and substantially prejudiced by a violation of his constitutional rights or that his trial suffered from a nonconstitutional defect inherently resulting in a complete miscarriage of justice. *Id.*

Moreover, a petitioner may not review an issue that was raised and rejected on direct appeal unless the interests of justice require relitigation of that issue. *In re Personal Restraint of Yates*, 177 Wn.2d 1, 17, 296 P.3d 872 (2013). Washington courts have limited the relief considered in the “interests of justice” to cases where an intervening change in law or some other circumstances justified the failure to raise a crucial argument on appeal. *Id.* But a petitioner who renews an issue may not just present different factual allegations or raise different legal arguments. *Id.* Even so, a petitioner may nevertheless renew challenges when the ends of justice would best be served by revisiting it. *In re Vandervlugt*, 120 Wn.2d 427, 432, 842 P.2d 950 (1992).

B. Mr. Sorenson received ineffective assistance of counsel, who, by his own admission, was unprepared for trial, failed to

investigate and interview witnesses, and failed to secure an expert witness on a suggestive or implanted memory defense.

To prove ineffective assistance of counsel, a defendant must show (1) his counsel's performance was deficient and (2) the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed.2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995).

A lawyer's performance is deficient if he made errors so serious that he was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Prejudice requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial. *State v. Jeffries*, 105 Wn.2d 398, 418, 717 P.2d 722, *cert. denied*, 479 U.S. 922 (1986). But the defendant need not show that counsel's deficient performance more likely than not altered the outcome of the case. *Strickland*, 466 U.S. at 693.

Legitimate tactics or strategy will not support a claim of ineffective assistance. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996).

Mr. Sorenson's new counsel acknowledged he was unprepared for trial. (RP 1 at 27-30). He had not interviewed the defense witnesses at all and was not ready to present a defense.

(*Id.*). The failure to investigate or interview witnesses is a recognized basis upon which a claim of ineffective assistance of counsel may rest. *State v. Ray*, 116 Wn.2d 531, 548, 806 P.2d 1220 (1991).

Defense counsel had not interviewed any defense witnesses and had not interviewed all the alleged victims. (RP 1 at 27-30, 44). No investigation was done even though counsel had been on the case for six months. (*Id.*). The charges against Mr. Sorenson were very serious and he was owed a competent defense. U.S. Const., amend. VI. Yet, counsel went into the trial cold. There was no claim, nor could there be, that the failure was based on counsel's strategy or tactics. In these circumstances, the failure to investigate or interview witnesses was ineffective assistance because his performance was deficient and prejudiced Mr. Sorenson by denying him a defense. A new trial is required. *Ray, supra*.

In light of the belated revelation by the alleged victims of inappropriate touching that was clearly triggered by Sabrina's telling the girls about her personal history of being molested, effective assistance also required securing an expert witness to evaluate the circumstances of their recollection as being a response to the

suggestion of molestation by Sabrina. *State v. A.N.J.*, 168 Wn.2d 91, 112, 225 P.3d 956 (2010). The only exception was BJS's disclosure of inappropriate touching four months before their separation. But Mr. Sorenson was acquitted of that count involving BJS, thus highlighting the critical importance of Sabrina's suggestion of molestation as to the credibility, or implanted memory, of the girls. Although funding was secured for a memory expert, counsel, without explanation, failed to follow through with the expert. (CP 49; RP 1 at 44).

In *Gersten v. Senkowski*, 426 F.3d 588, 607 (2d Cir. 2005), the court stated:

In sexual abuse cases, because of the centrality of medical testimony, the failure to consult with or call a medical expert is often indicative of ineffective assistance of counsel. . .

This is particularly so where the prosecution's case, beyond the purported medical evidence of abuse, rests on the credibility of the alleged victim, as opposed to direct physical evidence such as DNA, or third party eyewitness testimony.

Here, unlike *Gersten*, there was no medical testimony or evidence establishing any inappropriate touching or sexual assault. The case against Mr. Sorenson rested on the credibility of the alleged victims. Without a memory expert, he could not present a

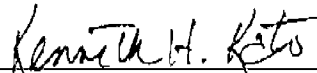
viable defense. (RP 1 at 4-5). He could only deny the incidents occurred. Rather than strategy or tactics, it was ineffective assistance when counsel failed to secure an expert witness to testify in support of the suggestive or implanted memory defense. *A.N.J.*, 168 Wn.2d at 112. Combined with the failure to investigate and interview witnesses, counsel's errors were so serious and egregious as to deprive Mr. Sorenson of a fair trial, particularly when counsel had access to such an expert. *Jeffries*, 105 Wn.2d at 418; *State v. Fedoruk*, 184 Wn. App. 866, 880-81, 339 P.3d 233 (2014). The remedy is a new trial with effective assistance of counsel.

#### IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Sorenson respectfully urges this Court to reverse his convictions and remand for new trial.

DATED this 15<sup>th</sup> day of September, 2015.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I certify that on September 15, 2015, I served a copy of the Brief in Support of Personal Restraint Petition by USPS on Ronald Sorenson, # 355432, 191 Constantine Way, Aberdeen, WA 98520.

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# KATO LAW OFFICE

**September 15, 2015 - 10:56 AM**

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